

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

IN THE MATTER OF : DOCKET NO. PROD. & UTIL. FAC. 50-320
: DOCKET NO. PROPOSED RULE PR-140
METROPOLITAN EDISON COMPANY : (44FR 43128)
ET AL., THREE MILE ISLAND NUCLEAR: STATION UNIT 2 : DETERMINATION REGARDING EXTRA-
ORDINARY NUCLEAR OCCURRENCE

DOCKET NUMBER
PROPOSED RULE

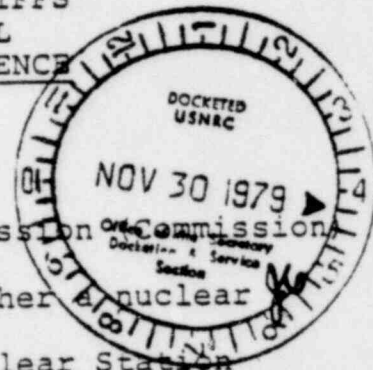
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PR. 140 (44FR 43128)

WRITTEN STATEMENT OF CLASS ACTION PLAINTIFFS
TO NUCLEAR REGULATORY COMMISSION PANEL
CONCERNING EXTRAORDINARY NUCLEAR OCCURRENCE

BACKGROUND

On July 8, 1979, the Nuclear Regulatory Commission initiated the making of a determination as to whether a nuclear incident which took place at Three Mile Island Nuclear Station Unit 2 (TMI) on and after March 28, 1979, constitutes an extraordinary nuclear occurrence (ENO). Pursuant to a notice published in the Federal Register, Volume 44 No. 142 on July 23, 1979, all of the Plaintiffs in the consolidated class action naming the Licensee of TMI and others as Defendants, which action is filed in the United States District Court for the Middle District of Pennsylvania, No. 79-432, filed a Submission of Information, Motion for Leave to Intervene and Request for Hearing. The names of these parties are found on Appendix A.

Subsequent to the filing of the above Submission of Information, the Commission formed a panel to consider information submitted relative to the possible declaration of an ENO. See, Federal Register, Volume 44 No. 175, September 7, 1979. On Tuesday, November 6, 1979, the Commission published in the Federal Register, Volume 44 No. 216,



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the procedural framework within which oral and written statements may be submitted and provided for a public hearing on Wednesday, November 21, 1979. It is in response to this notice that the following statement is being submitted.

STATEMENT WITH RESPECT TO 10 CFR §140.85 CRITERION II-
SUBSTANTIAL DAMAGES TO PERSONS OFFSITE OR PROPERTY OFFSITE

The language which is applicable to the nuclear incident occurring at TMI is found in 10 CFR §140.85(a). Subsection (2) indicates that one of the thresholds is \$5 million of damages in the aggregate, although the same sub-subsection allows this sum to be as small as \$2.5 million provided it is suffered by only one individual. This threshold has unequivocally been met. Sub-subsection (3) provides an alternate test of \$5,000 of damages by each of 50 or more persons provided \$1 million in the aggregate is involved.

In viewing the above provisions, it is important to note that the initial language in §140.85(a) allows a finding that the event "has resulted or will probably result" in the damages indicated. This language is repeated and, indeed, compounded in sub-subsections (2) and (3). This is a clear indication that uncertainties are to be resolved in favor of a positive determination.

The definition of damage is found in subsection (b) and the applicable elements of damage, given the facts of this incident, seem to be loss of use of affected property and financial loss resulting from protective actions appropriate to reduce or avoid exposure to radiation or to radioactive materials. There is a probability that there have been some costs necessary to put affected property back into use, even though the fact-gathering process has not yet revealed them.

Keeping the above criteria in mind, we wish to address several areas where substantial damages have been documented.

Beginning with the area that has been acknowledged by the Commission in its statement at Volume 44 No. 142, Federal Register, page 43131, namely, losses relative to protective actions, a telephone survey has been submitted to the Commission in the form of a preliminary report dated September 24, 1979.* The survey in question covers areas other than protective actions taken by families jeopardized by the accident, as well.

To summarize the relevant information relative to protective actions, the following information is presented. Within a 15-mile radius of the plant 144,000 people evacuated (p. 14). Thirty-four thousand of the evacuees lost approximately 256,000 person days of work. Nineteen thousand of these lost pay with the median loss being \$100 and the highest over \$500. The median cost of evacuation was \$100 (p. 26). Eighteen thousand people who stayed were adversely affected with 8,000 of them suffering loss of income (p. 26). There were other losses in 9% of the households and expenses in the same percentage of households with a median of \$50 (p. 27). The total losses for evacuees within the 15-mile radius were \$16,000,427.** As to non-evacuees, the loss was \$3,000,001. See Table III-13.*

These losses clearly fit 10 CFR 140.85(b)(4) as to type of damages and §140.85(a)(2) as to amount.

*Three Mile Island Telephone Survey, Preliminary Report on Procedures and Findings, Dr. Cynthia Bullock Flynn, September 24, 1979.

**\$1,215,000 of this loss was recouped by insurance payments.

There is another well-documented element of damages as it relates to the tourist industry in Pennsylvania. This is Pennsylvania's second largest industry; it employs 180,000 people and has a \$5 billion volume per year. See, Appendix B. According to a survey taken subsequent to the incident, two percent of potential tourists residing in neighboring states indicated that they would not visit Pennsylvania as a direct result of the incident. This indicates a loss to the tourist industry of \$95 million. See, Appendix C. The Pennsylvania Dutch Tourist Bureau alone estimates that it suffered losses of 25 percent of \$150 million or \$37.5 million. In an additional statement by Stan Beiter, Assistant Director of the State Commerce Department's Travel Bureau, travel and tourism receipts in Pennsylvania were off by 25 to 30 percent. "I think it's fair to attribute a third of that to TMI," said Mr. Beiter. This statement was made after the summer tourist season. See, Appendix C. If we were to conservatively assume that the tourist dollar is spread equally throughout the year and use the 25 percent shortfall figure over the five months between the incident and Mr. Beiter's statement, it translates to a \$117 million loss. This is remarkably similar to the \$95 million loss predicted by the earlier survey. All of this clearly demonstrates that the threshold has been met.

The Commission's regulations address this issue in terms of loss of use of affected property. Nowhere do the regulations define the meaning of "loss of use." In Pennsylvania, loss of use has been held to mean the fair rental value of the property for the period of time that it was not used due to damage thereto. See, for example, Frye v. Pennsylvania Railroad Company, 187 Pa. Super. 367

It is highly unlikely that these damages will be questioned because the actions taken by the evacuees were not "appropriate" within the meaning of §140.35(b)(4). One needs only to review the material in the same report to conclude that these actions were appropriate. A few examples will suffice. Forty-eight percent of the respondents to the survey thought the threat was very serious, 19 percent thought it was serious and 21 percent thought it was somewhat serious. Among evacuees, 63 percent perceived the threat as very serious. In terms of emotional upset, more than one-fifth of those sampled were extremely upset (p. 29).

The reasons contributing to the decision to evacuate are also instructive. These are shown on Table III-4. More than one answer was permitted so that the percentages total more than 100. The results are as follows: 91 percent replied that the situation seemed dangerous; 83 percent replied that information on the situation was confusing; 61 percent to protect children; 8 percent to protect pregnancy; 76 percent to avoid the confusion or danger of a forced evacuation; 28 percent because of pressure from someone outside of the family; and 5 percent because of a trip planned before the incident.

Even if the Commission did not have the benefit of the survey, it is hard to believe that it would refuse to find that the actions were appropriately taken given the situation that everyone knows existed on March 28 and the following days. It is certainly not necessary as a part of this presentation to remind the Commission of the atmosphere and panic that was felt at that time because it is well known wherever a radio or television set was played or a newspaper was published.

(1958). This concept does not refer only to leased real estate but to rental value of any realty in question. Even if the narrow view were taken, substantial percentages of tourist dollars go toward rental of hotel and motel space. It would be difficult to imagine that of the approximately \$100 million of gross loss in tourism at least \$5 million is not attributable to the loss of use as measured by the loss of fair rental value.

No further examples of damages have been chosen, simply because the above two types of losses should amply demonstrate currently documented losses sufficient to make the necessary favorable findings. The responses to class action notices in the TMI litigation should yield much more qualifying information. However, the notices have not yet been sent and responses will not be tabulated until sometime in 1980.

STATEMENT WITH RESPECT TO 10 CFR §140.84 CRITERION I-
SUBSTANTIAL DISCHARGE OF RADIOACTIVE MATERIAL OR
SUBSTANTIAL RADIATION LEVELS OFFSITE .

The requirements with respect to levels of radiation or radioactive materials offsite are found at 10 CFR §140.84. They consist of alternate criteria of doses to individuals offsite on the one hand and contamination to property offsite on the other.

It is not the intention of this statement to add to any of the information submitted by the Class Action Plaintiffs on August 28, 1979. Some further reference will be made, however, to the fashion in which certain data have been handled by the Commission staff.

It was the intent of Congress as expressed in the Price-Anderson Act, Pub. L. No. 85-256, 71 Stat. 576 (1957), as amended, to encourage

the development of nuclear power while protecting the public financially in the event of nuclear incidents, among other things. It is in this context, that the concept of the Extraordinary Nuclear Occurrence was conceived, and the Commission was charged with the duty of promulgating regulations and administering these regulations in suspected Extraordinary Nuclear Occurrences. One of the important parts of the Price-Anderson Act is the waiver of defense provision found in §170n. This subsection also, in the event of an Extraordinary Nuclear Occurrence, gives exclusive jurisdiction to the District Court in which the incident occurred, thereby avoiding a multiplicity of lawsuits as the result of a nuclear incident.

The Commission has determined in one respect that the benefit of the doubt will be given in favor of an Extraordinary Nuclear Occurrence. This language is found in 10 CFR §140.84(a), wherein the regulations state that the threshold finding will be made where "the Commission finds that one or more persons offsite were, could have been, or might be exposed," to radiation or radioactive materials at certain levels. (Emphasis supplied.)

It has been suggested in one law review article that "to activate the waiver of defense provisions for victims of all nuclear incidents, the NRC should routinely declare every release of radioactivity to be an 'extraordinary nuclear occurrence'...."* At the time the Price-Anderson Act was being considered by Congress, it is evident that an Extraordinary Nuclear Occurrence was anticipated in any case involving damages of the magnitude created by the TMI incident.

*Nuclear Power and the Price-Anderson Act: Promotion Over Public Protection by Daniel W. Meek, Stanford Law Review, Vol. 30 No. 2, January 1978, p. 459.

The legislative history of the Act reveals the following:

"...[A] nuclear incident need not reach catastrophic proportions or involve government funds before the waivers of defenses contemplated by this bill would apply. Indeed, an incident involving only a very small fraction of the amount of private insurance available could well fall within the system of waivers."*

"The discretion conferred on the AEC [Sic] is such that an event involving relatively small amounts of demonstrable damage could be held to be 'an extraordinary nuclear occurrence.'***

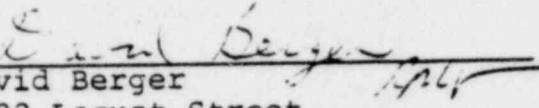
It is doubtful that Congress would have passed the Act in the precise language finally adopted had Congress anticipated a traumatic situation such as the one at hand without the certainty of legal relief assured by an ENO declaration regardless of the specific amount of radiation. Indeed, it may well be that Congress considered releases as low as less than 100 mrem as being substantial.

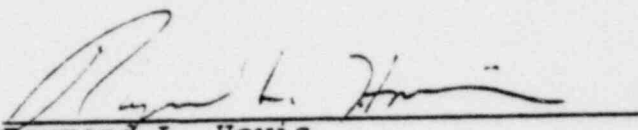
In the TMI related publications of the Commission, there are some disturbing options being utilized in order to reach conclusions that the maximum potential dose to an individual was low. For example, in NUREG-0558, at page 48, it is concluded that the dose to the individual on Hill Island is most probably 37 mrem. This conclusion completely rejects a TLD reading of 900 mrem which is admittedly high compared to some compared to other TLD readings. However, in NUREG-0600, at page II-3-92 in Footnote **, it is stated that "according to a telecon with a representative of Teledyne Isotopes, the factor of two difference between the Kohr Island TLDs cannot be explained."

*US Code Congressional Administrative News, 1966 at p. 3211.

**id. at p. 3212.

meant to protect the people in the surrounding community. Third, even if the releases to date are not viewed as meeting the threshold, the Commission should not refuse to find an ENO until the possibility of future releases and further interpretation of all data are foreclosed.


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White Shield, Inc.
Komet Co., Inc.
First Edition Book Stores, Inc.
Wolowitz, Inc., d/b/a "Young Image Shop"
Free Car Wash, Inc., d/b/a "Gas and Wash"
Cumberland Skadium, Inc., d/b/a "Cumberland Skadium"
Harry Cramer, Inc., d/b/a "Harry Cramer Oldsmobile"
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Penn Photo, Ltd.
Pennsylvania National Turf Club, Inc.
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TMI has hurt tourism in state, official says

HARRISBURG (UPI) — A Commerce Department official said Wednesday the Three Mile Island nuclear accident had a destructive impact on Pennsylvania's image — perhaps as much as any mishap has had on any state in American history.

Stan Beiter, assistant director of the Commerce Department's Bureau of Travel Development, also told the House Select Committee on Three Mile Island

the March 28 accident severely hurt tourism in southcentral Pennsylvania.

The Pennsylvania tourist business, the state's second largest industry, employs 180,000 and does \$5 billion in trade a year.

"The Three Mile Island nuclear accident started a chain of events which have had a severe impact on the citizens of southcentral Pennsylvania and disastrous economic impacts on businesses and their

employees," said Beiter.

However, Beiter said, the Commerce Department was optimistic that the nuclear mishap did not cause permanent harm to the tourist industry in the southcentral region, known for its Amish and chocolate-maker attractions.

According to a department survey of potential tourists residing in neighboring states, only 2 percent said they would not visit Pennsylvania on vacation as a

direct result of the Three Mile Island accident, Beiter said.

Beiter said the state plans to conduct an advertising campaign to counteract the negative publicity produced by the nuclear accident.

"The thrust of the entire campaign will be directed towards projecting an all-clear image of Pennsylvania following one of the most imagedamaging mishaps in American history," said Beiter.

It was easier to gauge the short-range effects of the nuclear accident — such as convention cancellations at area motels — than to estimate the long-range impact, according to Beiter.

James Bartlett, executive director of the Pennsylvania Dutch Visitor's Bureau in Lancaster, said tourism in his region was off 50 percent this year, partly because of the nuclear accident.

He said losses amounted to \$150

million, with 20 percent due to apprehension because of Three Mile Island. Lancaster County was also adversely affected by a polio outbreak, the gas shortage and inflation, he said.

In other testimony, Banking Secretary Ben McEnteer said he was surprised to learn that not all Pennsylvania banks have duplicate information systems in case of a nuclear accident that could destroy originals.

5/12/79

TMI cited in bid for tourism funds

Daily Record
May 12, 1979

HARRISBURG (UPI) — Commerce Secretary James Bodine said Friday Pennsylvania got "more visibility from Three Mile Island than it has had in a long time — and visibility is the name of the game" in tourism promotion.

Bodine said the four monumental cooling towers on the site of the crippled nuclear plant "are becoming a tourist attraction on their own — though I'm not sure of the wisdom of promoting it."

Bodine's remarks came at a news conference where he acknowledged Three Mile Island's threat to Pennsylvania's \$4.7 billion annual tourism industry and announced results of a privately funded tourism survey.

That survey showed only two percent of 608 families in six states

planning vacation trips would avoid Pennsylvania because of Three Mile Island. But that two percent projects to a potential \$95 million loss.

He said the loss shown by the R. H. Bruskin Associates survey "can be turned around — but not by sitting on our hands."

"We must promote tourism hard and try to find federal and state funds to overcome the effects of those three weeks at Three Mile Island."

"The \$1 million we are requesting in our budget for tourism promotion is crucial," Bodine said, "for the second biggest industry this state has."

The survey showed that while 6 percent will avoid Harrisburg because of Three Mile Island publicity, only 1 percent would avoid Hershey, Lancaster or Gettysburg. Less than 1 percent would avoid the Poconos, Philadelphia or Pittsburgh.

TMI's Effect

8/23/79

Pa. Seeks Cash To Reassure Tourists

York Dispatch
August 23, 1979

HARRISBURG (AP) — Pennsylvania officials are seeking a \$50,000 federal grant for an "all clear" campaign to convince tourists the air is clean and the water clear in the state that is host to the Three Mile Island nuclear plant.

The March 28 accident at Three Mile Island, the worst in the nation's commercial nuclear history, was only the latest in a series of calamities to befall the state's \$5 billion tourist industry — but it is coming in for a lion's share of the blame.

"Travel and tourism receipts in Pennsylvania are down 25 to 30 percent. I think it's fair to attribute a third of that to TMI," Stan Belter, assistant director of the state Commerce Department's travel bureau, told a House select committee investigating the accident.

Pennsylvania tourism has had many setbacks in recent years — there were floods in the early 1970s, then Legionnaires' disease struck Philadelphia in the midst of the Bicentennial.

Finally, as the state's Amish were coming down with case after case of polio — and just before motorists ran out of gasoline — Three Mile Island's reactor nearly overheated itself into a disaster.

There is further evidence in NUREG-0600 that the Commission has rejected very high readings taken by the Licensee on March 28. See, page III-3-76 and following. For purposes of the ENO proceeding, these options should be resolved in the "could have been or might be" light mandated by the regulations. 10 CFR §140.84(a).

It is anticipated that additional submissions relating to release of radiation and radioactive materials will be presented to the Panel by others for consideration. This additional information should also be considered in the same light.

In fact, there may be further substantial releases of radioactivity in the future inasmuch as the conditions of the core and containment are unknown. The decontamination or decommissioning of this plant will be unique. Even as these alternatives are being considered, the release of trapped radioactive gases is being requested. A further untoward occurrence could produce its own threshold doses or contaminations. Therefore, if present releases are considered insufficient, the door to a future declaration should be left ajar. This would be best accomplished by deferring the determination.

In summary, the Commission should be mindful of the following: First, emphasis should be given to the words "could have been, or might have been exposed" when considering whether threshold doses have been met. Second, it was the intention of Congress that any nuclear incident causing great confusion, fear and monetary damage would also of necessity have fulfilled its requirement of substantial radiation which is not necessarily a large amount of radiation. The efforts of the Commission should be to follow the intent of Congress in promulgating the Price-Anderson Act which, among other things, is